

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (HMA) No.244 of 2000.

Judgment reserved on:20.04.2007.

Decided on: April 30, 2007

Harjeet Kaur

.....Appellant.

VERSUS

Bhupinder Singh

.....Respondent.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?¹ Yes

For the Appellant:

Mr.M.L.Sharma, Advocate.

For the Respondent:

Mr.Hardeep Verma, Advocate.

Kuldip Singh, Judge.

The wife has filed this appeal against the judgment and decree dated 1.5.2000 passed the learned District Judge, Shimla in H.M.A.C. No.6-S/3 of 1997 dissolving the marriage of the parties by a decree of divorce on the ground of desertion. The parties in the judgment are referred in the same manner as in the impugned judgment and decree.

2. The facts disclosed in the petition filed by husband are that marriage between the parties was solemnized on 7.4.1985 according to rites and customs of Sikhs at Ambala. The parties initially cohabited at Paonta Sahib and then at Jutogh, Shimla where the

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment ? yes***

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petitioner was posted. The behaviour of the respondent towards petitioner was rude and cruel from the very beginning. She would pick up quarrel over petty matters. She never attended to the friends and relatives of the petitioner whenever they visited his place. The attitude of the respondent towards mother, sisters and other members of petitioner's father's family was also not good. She used to pick up quarrel with them. She always insisted to live separately. The petitioner being the eldest member of his father's family could not afford to live separately. This annoyed the respondent.

3. The respondent was in the habit of visiting her parents at Ambala after every 15-20 days. She would insist the petitioner to accompany her and when he expressed his inability to meet this unreasonable demand she turned furious and created tension. She always taunted and harassed the petitioner and often proclaimed that she did not like his looks. A daughter was born from the wedlock on 24.12.1986 at Ambala at the parental house of the respondent. After birth of the child she returned to Jutogh in March 1987 but in July 1987 she left the matrimonial home. During her short stay from March 1987 to July 1987 at Jutogh she created disharmony and friction in the matrimonial home. She was requested many times to return to Shimla. On persuasion she came in December 1987 but again left for Ambala in March 1988. On the request of the petitioner and his family members she came back in April 1988 and soon started humiliating

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and nagging the petitioner. She insisted to go back to her parents' place in Ambala but the petitioner did not agree to this. The respondent by making her own arrangement left the house of the petitioner in September 1988 and since then she is living at Ambala.

4. In February 1992 she filed a petition for divorce in the Court of Additional District Judge, Amabala which was withdrawn on 6.8.1992 when she realized that no ground of dissolution of marriage existed. Thereafter, she filed a petition for maintenance in the Court of Judicial Magistrate 1st Class, Ambala Cantt. This petition was allowed on 29.11.1994. She filed another petition for grant of maintenance to minor daughter of the parties which was pending at the time of filing of the present petition.

5. The case of the petitioner in brief is that respondent has left the matrimonial home in September 1988 without any excuse and has refused to return to the matrimonial home and this constituted desertion. He further alleged that the attitude and behaviour of the respondent had been cruel throughout her stay with him and so he is entitled to divorce on the ground of mental cruelty and desertion.

6. The respondent contested the petition. She has taken the plea that the petition has not been filed in accordance with the rules. She has denied all the allegations of cruelty and desertion. The respondent has taken the plea that in fact the petitioner and his family members had been cruel to her during her stay with the petitioner.

She denied that she ever asked the petitioner to separate himself from his father's family. She denied that she was in the habit of visiting her parents frequently. According to her, she used to visit her parents occasionally. She has alleged that the petitioner used to give her beatings after excessive drinking and that her mother-in-law also used to quarrel with her. She has pleaded that the daughter was not born in December 1986, rather she was born on 24.9.1987 and nobody from the side of her in-laws, including the petitioner, visited her parents' place after the birth of daughter. She has denied that she came to Shimla along with her child and left the matrimonial home in September 1988.

7. The learned District Judge allowed the petition on the ground of desertion and rejected the case of the petitioner to seek divorce on the ground of cruelty.

8. I have heard the learned counsel for the parties and have also gone through the record.

9. The learned counsel for the respondent has submitted that the learned District Judge has misconstrued and mis-interpreted the evidence on record. The view taken by the learned District Judge on the point of desertion of the wife is wrong. He has submitted that husband has miserably failed to prove the desertion of the wife. The learned counsel for the petitioner / husband has supported the impugned judgment and decree and has submitted that the learned

District Judge has rightly come to the conclusion that wife has deserted the husband without reasonable cause. He has submitted that the husband has proved factum of desertion as well as intention of the wife not to live with the husband.

10. The husband has appeared as his own witness as PW-1. He has deposed that their marriage was solemnized on 7.4.1984 at Ambala and the daughter was born at Ambala in December 1986 from the wedlock. The respondent came to Shimla for short intervals but stayed most of the time with her parents even after the birth of the daughter. She would come to Shimla to stay with the petitioner on persuasion but during her stay at Shimla she would not cooperate with the petitioner. She lastly left Shimla in July 1988 and thereafter never returned. In the year 1991 or 1992 she filed a divorce petition against the petitioner at Ambala which was withdrawn by her later on. Then she filed a petition to claim maintenance which was allowed and petitioner was directed to pay maintenance. She filed another petition for maintenance for the daughter which petition was also allowed. He tried to settle the matter. The petitioner was cross examined at length but nothing favourable to the respondent has come in the cross examination of the petitioner. PW-2 Sainu Ram is the person who was living in the neighbourhood of the parties at Jutogh. He has stated that the parties used to quarrel and the quarrel used to be initiated by respondent. PW-3 is Dharminder Pal Singh who has stated that

respondent used to pick up quarrels. The respondent used to left matrimonial home after every 3-4 months. She would stay only for a few months and again her parents or brothers would take her to Ambala. In cross examination he has stated that he has not seen the respondent at Jutogh since 1988 and she finally left the matrimonial home in 1988. PW-4 Jitender Singh is the elder brother of the petitioner. He has stated that behaviour of the respondent with the petitioner has not been good from the very beginning. For the last 10-11 years, the respondent has been staying with her parents. The respondent Harjeet Kaur appeared as RW-1. She has stated that she was not treated well by the petitioner whenever she lived with him. He is habitual of drinking. She has admitted that she filed a divorce petition against the petitioner at Ambala which was withdrawn. She has stated that she did not return to the place of petitioner even in the company of her brother or father or father's brother after September 1987 because nobody from her in-laws side came to see the child delivered by her. She has further stated that she filed the maintenance petition because the petitioner did not turn up at her parents' place to bring her back to Shimla. She has also admitted that she filed another maintenance case for the daughter. RW-Pradeep Kumar has stated that respondent used to complain about the behaviour of petitioner. In cross examination, he has stated that his

house is close to the house of respondent's parents' house. This is the only evidence led by the parties.

11. It is a fact that respondent is not living with petitioner since September 1988, that means for the last 19 years the parties are living separately. The respondent herself filed divorce petition for dissolving the marriage of the parties which was withdrawn later on by her. She filed one petition for maintenance for herself and another petition for maintenance of the daughter. The respondent has not shown any reasonable cause to live separately at Ambala. There is nothing on record that respondent ever approached the lawful authorities against the alleged ill treatment of husband. The residence of the respondent after marriage is with the petitioner. She has not placed unimpeachable evidence on record to support her separate living. On the basis of material on record and conduct of the respondent, it is clear that respondent has no intention to live with the petitioner and to continue the matrimonial tie. The petitioner has proved desertion and the respondent has failed to prove any just and reasonable cause to live separately. She has levelled bald allegations against the petitioner which have not been proved. The learned District Judge has appreciated the evidence in its right perspective. The petitioner has proved the factum of desertion as well as *animus deserendi* on the part of the respondent. The learned counsel for the respondent has relied on ***Lachman Utamchand Kirpalani vs. Meena***

alias Mota, AIR 1964 SC 40 for the proposition that petitioner cannot take benefit of his own wrong. He has submitted that respondent has excuse to live separately. The petitioner did not make efforts for reconciliation and for taking back the wife and, therefore, it will be presumed that husband has consented for separate living of wife. In the present case, it has been proved on facts that respondent without any reasonable cause has left the company of the petitioner. The wife is living at Ambala against the wish of the petitioner. It has come on record that petitioner several times made attempts to bring back the respondent but every time after staying for some time at Jutogh she left the company of the petitioner and since September 1988 she has not come back to live with husband in the matrimonial home. In Para-20 of **Lachman's** case (supra), the Hon'ble Supreme Court has observed as follows:-

“20. The other matter is this. Once desertion, as defined earlier, is established there is no obligation on the deserted husband (taking the case where he is the deserted spouse) to appeal to the deserting spouse to change her mind, and the circumstance that the deserted husband makes no effort to take steps to effect a reconciliation with the wife does not debar him from obtaining the relief of judicial separation, for once desertion is proved the deserting spouse, so long as she evinces

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no sincere intention to effect a reconciliation and return to the matrimonial home, is presumed to continue in desertion.”

The ***Lachman's*** case (supra) helps the petitioner rather than the respondent. The learned counsel for the respondent has failed to make out any case for interference.

12. No other point was urged.

13. In view of above discussion, the appeal is dismissed and the impugned judgment and decree are affirmed with no order as to costs.

April 30, 2007
(soni)

(Kuldip Singh)
Judge.